Before the
FEDERAL COMMUNCATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board On	)	**CC Docket No. 96-45**
Universal Service	)	

CONDITIONAL PETITION FOR RECONSIDERATION

Sprint Corporation seeks conditional reconsideration of one aspect of the Seventh Report and Order released May 28, 1999 in the above-captioned docket (FCC 99-119). Specifically, Sprint seeks reconsideration of the determination in ¶90 that the assessment base for the high cost fund should continue to include only interstate and international end-user telecommunications revenues. Sprint urges the Commission to broaden the assessment base to include intrastate revenues, but only if the Commission also eliminates the requirement that the ILECs pass their contributions to universal service funds on in the form of higher access charges, which principally fall on the long distance carriers and, ultimately, their customers.

In ¶90, the Commission acknowledged the Joint Board's observation that broadening the assessment base to include intrastate end user revenues, as well as interstate would have two benefits: it would obviate the need to separate revenues on a jurisdictional basis and would result in a lower assessment rate because of the broader assessment base. However, because of the pending litigation over the assessment base issue in Texas Public Utility Counsel v. FCC, 5th Cir. Case No. 97-60421, the

Commission determined that pending further resolution of this matter by the Fifth Circuit, it would continue to adopt an interstate-only assessment and recovery base for contributions to both the high cost and low income support mechanisms.

In seeking reconsideration of this issue, Sprint acknowledges that the Commission has discretion to refrain from revisiting its prior determinations until after the Fifth Circuit decides the pending case. However, Sprint is filing this petition so that the Commission can immediately proceed to a decision on this issue once the Fifth Circuit acts, assuming nothing in the Fifth Circuit's decision would preclude broadening the assessment base.

The merits of broadening the assessment base, assuming fair and equitable recovery is also required, are clear. As matters now stand, long distance carriers bear a disproportionate share of universal service costs. But local carriers, even those that serve low-cost urban areas, benefit from the availability of affordable service in high-cost rural areas and to low-income consumers. Being able to place calls to such areas enhances the value of subscribing to telephone service – a local service – in New York, Chicago and Los Angeles; and it is the local carriers that, in the first instance, benefit from this enhanced value of the services they provide. Thus, expanding the assessment base for the Federal USF to include intrastate revenues more equitably reflects the benefits to local carriers (and their subscribers) flowing from the high-cost and low-income support programs.

However, the Commission should broaden the assessment base to include intrastate revenues only if the Commission revisits its determination to require ILECs to pass the vast bulk of their contributions on to IXCs through access charges. This issue

was before the Commission at time the Commission issued its Seventh Report and Order,[1] but was not addressed by the Commission in its Order. The current requirements disproportionately burden long distance carriers and their customers with the costs of USF programs and violate the principles of non-discriminatory and competitively neutral recovery of USF costs that are embodied in §254 of the Act. Expanding the assessment base by adding intrastate end-user revenues, which are, for the most part, ILEC revenues, but continuing to require ILECs to pass their contributions on to long distance carriers through higher access charges would only serve to increase the disproportionate burden that has already been placed on long distance carriers and users of long distance services. However, by also revisiting the recovery method and eliminating the mandatory use of access charges as the primary recovery vehicle, all carriers could recover their USF costs through a simple surcharge applied to their end users' total charges for telecommunications services. Such a surcharge would be substantially reduced from the surcharge long distance carriers apply today because of the significantly broadened assessment base.[2] Thus, assuming the Fifth Circuit's decision does not preclude a broadening of the assessment base, Sprint urges the Commission to act promptly following that decision both to broaden the recovery base and change the recovery method as discussed above.

There are two other aspects of the Report and Order on which Sprint wishes to comment briefly. First, Sprint is deeply disappointed with the statements in ¶45 that the

[1] See e.g., Comments of Sprint Corporation, December 23, 1998 at 14-15.

1996 Act does not require states to adopt explicit universal service support mechanisms. The Commission's view (id.) that "Congress did not require states to establish explicit universal service support mechanisms" is only partially correct. Congress did not require states to establish any universal service mechanism at all. However, it did command in §254(f) that any state that chooses to "adopt regulations...to preserve and advance universal service within that state" can only do so "to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms... ." An attempt to foster universal service objectives through implicit cross subsidies (e.g., of local service rates by access or toll rates) clearly runs afoul of §254(f). Moreover, to the extent that such implicit subsidies give incumbent LECs an edge over potential entrants (e.g., by permitting – indeed requiring – them to charge below-cost rates for local service), they also constitute a barrier to entry that is precluded by §253 of the Act. The Commission acknowledged these anticompetitive effects of implicit subsidies in ¶¶7-9 of the Order.

It may be painful to replace hidden subsidies with explicit USF support programs, but it nonetheless required both by §254 of the Act and by the broader policy goal of fostering competition in all telecommunications services. In this regard it is noteworthy that the Supreme Court, referring to implicit subsidies of universal service in local rates subject to state jurisdiction, stated that "§254 requires that universal-service subsidies be phased out... ."[3] The Commission is not helping matters by giving states the impression

[2] Approximately 62 percent of total telecommunications end user revenues are intrastate. See Public Notice DA 99-1081, released June 4, 1999, "Proposed Third Quarter 1999 Universal Service Contribution Factors," at 6.

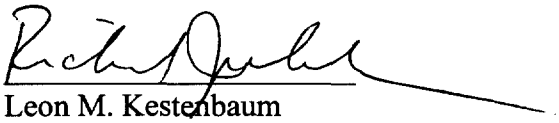
[3] AT&T Corp. v. Iowa Utilities Bd., 119 S.Ct. 721, 737 (1999).

that they can ignore this command. However, since the Commission's statements in ¶45 are merely dicta, Sprint is not seeking reconsideration on this point.

On the other hand, Sprint applauds the Commission for concluding (in ¶72) that all carriers, including CMRS carriers, are eligible for ETC status under §214(e)(1) regardless of the technology used. Wireless service carriers offer the potential for a low cost alternative to the ILECs for serving certain types of low-density areas, and there is no reason why they should not be eligible for universal service support when they do so.

Respectfully submitted,

SPRINT CORPORATION



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